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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,322	07/26/2006	Setsuo Tokoro	07057.0123-00000	4680
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
NGUYEN, TAN QUANG				
ART UNIT		PAPER NUMBER		
3661				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/587,322

Applicant(s)

TOKORO ET AL.

Examiner

TAN Q. NGUYEN

Art Unit

3661

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-32 is/are pending in the application.
- 4a) Of the above claim(s) 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16, 18 and 32 is/are rejected.
- 7) ☒ Claim(s) 17 AND 19-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAIL ACTION

Notice to Applicant(s)

1. This office action is response to the Election filed on April 02, 2009. Application elected Group I (claims 16-30, 32) without traverse. Thus, claim 32 has be withdrawn as to non-elected claim.
2. In claim 29, line 2, the term "means" should be deleted in order to corresponding to the claim 18.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
4. The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. As per claim 32, the claim limitation "first object detecting means" uses the phrase "means for", but it is modified by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because of the recitation of the structure radar.
6. If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase "means for" or "step for" is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.
7. If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not

be a means (or step) plus function limitation (e.g., deleting the phrase “means for” or “step for”).

8. The following rejections are based on the examiner's best interpretation of the claims in light of the 35 U.S.C. 112 errors noted above.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 16 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Winner et al. (6,580,385).

11. As per claim 16, Winner et al. disclose the invention as claimed which includes a first object detecting portion that detects an object near a vehicle using radar (see at least column 6, lines 30-43), a second object detecting portion that detects an object near the vehicle by performing image recognition based on an obtained image of a area near the vehicle (see at least column 6, lines 43-67), a running support portion that supports running of the vehicle (see at least column 6, lines 64-67), and a control condition for running support control performed by the running support portion is changed on the basis of an evaluation whether the object has been detected by only the

first object detecting portion, only the second object detecting portion or both the first and second object detection portions (see at least figures 3, 4 and the related text).

12. As per claim 32, the limitations of this claim have been noted in the rejection above. They are therefore considered rejected as set forth above.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

15. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winner et al. as applied to the claims above, and further in view of Cardinal et al. 97,051,827).

16. Winner et al. disclose the claimed invention as discussed above except for an inattentive condition detecting portion for detecting whether a driver is performing

inattentive driving, and changing the control of the running support. However, Cardinal et al. suggest a cruise control release system effective for automatically disengaging a cruise control system when a vehicle experiences a lateral acceleration indicative of a loss or impending loss of driver control (see at least the abstract). I would have been obvious to an ordinary skill the art at the time the invention was made to incorporate the teaching of Cardinal et al. into the system of Winner et al. in order to improve the control of the vehicle by taking the parameter relates to driver inattentive condition into account.

17. Claims 17 and 19-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

18. Claims 16, 18 and 32 are rejected. Claims 17 and 19-30 are objected. Claim 31 is withdrawn.

19. The following references are cited as being of general interest: Takahashi (5,901,806), Braecuhle et al. (7,012,560), Kobayashi et al. (7,379,815), and Yanagidaira et al. (2003/0033082).

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Tan Q. Nguyen, whose telephone number is (571) 272-6966. The examiner can normally be reached on Monday-Thursday from 6:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached on (571) 272-6956.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to the Official Fax Center: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 27, 2009

/TAN QUANG NGUYEN/
Primary Examiner
Art Unit 3661